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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/563,237

05/08/2007

Peter Finmans

Muller-51

8670

39703

7590

06/02/2010

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EXAMINER

PUTTLITZ, KARL J

ART UNIT

PAPER NUMBER

1621

MAIL DATE

DELIVERY MODE

06/02/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



<b>Office Action Summary</b>	<b>Application No.</b> 10/563,237	<b>Applicant(s)</b> FINMANS ET AL.	
	<b>Examiner</b> KARL J. PUTTLITZ	<b>Art Unit</b> 1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) 33-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/6/2006</u> . | 6) <input type="checkbox"/> Other: _____  |



## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of claims 21-32 in the reply filed on 5/24/2010 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 recites the structure of the metal salts, but both structures have a -O group, which indicates that these groups are covalently bound to the metal.

Claim 23 recites a structure of the metal salts which have variables not present in claim 21.

The claims are replete with preferred embodiments. It is unclear if applicant intends the claim to only cover the preferred embodiments.

Claims 24-32 recite "any one of claim 21".

The term "the metal compound" in claim 31 lacks antecedent basis.



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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,998,646 to Riondel et al. (Riondel) or FR 1205366 (FR 366) in view of U.S. Patent No. 2,844,551 to Orthner et al. (Orthner).

Riondel and FR 366 are applied for the proposition that compounds of the structures set forth in claims 21 and 23, shown below, respectively:



and a metal (M) selected from the group consisting of

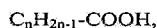
Al, Si, Sn, La, Zr, Cu and Zn and mixtures thereof.



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and can be obtained by reaction of a linear or branched, unsaturated carboxylic acid of the formula



wherein n represents 2, 3, 4, 5, or 6 with the double bond in 2- or 3-position, preferably in 2-position, with a metal compound of the general formula



and, optionally,



wherein

a is at least 1,

b is 0, 1, 2 or 3 and

(a+b) and c are independently of one another an integer of 2 to 4,

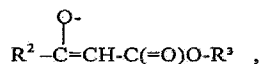
R<sup>1</sup> represents an alcoholate group having a C<sub>1</sub> - to C<sub>6</sub> hydrocarbon residue,

wherein R<sup>1</sup> is a saturated, linear or branched alcoholate group, which can be

obtained from an alcohol having at least one -OH group, wherein the -OH

groups are preferably primary or secondary -OH groups,

or



are known to be prepared by reaction of metal alcoholates and carboxylic acids.

Notwithstanding the fact that the specific metals required by the claims are not taught by Riondel or FR 366, it is for this proposition that the examiner joins Orthner, which specifically teaches the preparation of aluminum salts, as claimed. Accordingly, the use of the recited metals in the process is prima facie obvious.



***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl J. Puttlitz whose telephone number is (571) 272-0645. The examiner can normally be reached on Monday to Friday from 9 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Sullivan, can be reached at telephone number (571) 272-0779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Karl J. Puttlitz/

Primary Examiner, Art Unit 1621